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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Pinnacle Nissan, LLC,

10 Third-Party Plaintiff/Cross
11 Defendant,

12 v.

13 Manheim Phoenix, dba Manheim
14 Remarketing, Inc. and Marcos Vidal Lopez,
True Credit Auto.

15 Third-Party
16 Defendants/Cross-Defendant.

No. CV16-0170-PHX DGC

ORDER

17 The Court previously granted default judgment in favor of Defendant and third-
18 party Plaintiff Pinnacle Nissan, LLC, and against third-party Defendants Marcos Vidal
19 Lopez and True Credit Auto Wholesale. Doc. 96. The judgment was for common law
20 indemnity. Docs. 75, 96. The Court directed Pinnacle to file a memorandum on the
21 amount of damages to be awarded, and Pinnacle has done so. Doc. 108. The third-party
22 Defendants have not appeared or opposed the memorandum, and Pinnacle has not
23 requested oral argument.

24 **I. Background.**

25 Plaintiffs Tom and Marcine Raatz sued Pinnacle, True Credit, and others for
26 breach of contract and violations of the Federal Motor Vehicle Information and Cost
27 Savings Act, also known as the Federal Odometer Act, 49 U.S.C. § 32701, alleging that
28 Tom Raatz purchased a vehicle with an altered odometer reading. *Id.*, ¶ 1. The vehicle at

1 issue had the following history: True Credit, through its principal and agent, Lopez
2 (Doc. 108 at 3), placed the vehicle in an auction, Pinnacle purchased the vehicle in the
3 auction and then returned it (*id.* at 2), another dealer then purchased the vehicle from the
4 auction and sold it to Tom Raatz (*id.*). Pinnacle asserted third-party claims against Lopez
5 and cross-claims against True Credit. Doc. 34.

6 **II. Legal Standard.**

7 The damages Pinnacle seeks to recover from Lopez and True Credit are attorneys'
8 fees Pinnacle has incurred in this litigation. "In Arizona, courts generally do not construe
9 'damages' to include attorneys' fees." *City Ctr. Exec. Plaza, LLC v. Jantzen*, 344 P.3d
10 339, 343 (Ariz. Ct. App. 2015). But "[i]t is generally held that where the wrongful act of
11 the defendant has involved the plaintiff in litigation with others or placed him in such
12 relation with others as makes it necessary to incur expense to protect his interest, such
13 costs and expenses, including attorneys' fees, should be treated as the legal consequences
14 of the original wrongful act and may be recovered as damages." *United States Fid. &*
15 *Guar. Co. v. Frohmiller*, 227 P.2d 1007, 1009 (Ariz. 1951). "In order to recover
16 attorneys' fees under this principle, the plaintiff must show: (1) that the plaintiff had
17 become involved in a legal dispute either because of a breach of contract by the
18 defendant or because of the defendant's tortious conduct; (2) that the dispute was with a
19 third party not with the defendant; and (3) that the plaintiff incurred attorneys' fees
20 connected with that dispute." *Spanier v. United States Fid. & Guar. Co.*, 623 P.2d 19, 29
21 (Ariz. Ct. App. 1980).

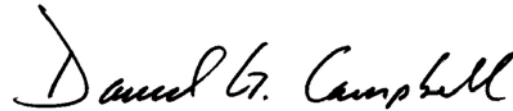
22 **III. Analysis.**

23 Pinnacle requests judgment in the amount of \$26,544 for the cost of defending
24 against the Raatzes' claim. To recover attorneys' fees as damages, Pinnacle must show
25 that it became involved in this lawsuit because of the conduct of Lopez and True Credit.
26 *Spanier*, 623 P.2d at 29. Pinnacle purchased the vehicle with the altered odometer from
27 True Credit and Lopez, was sued by the Raatzes as a predecessor in the chain of title, but
28 Lopez and True Credit were the predecessors to Pinnacle. Doc. 96 at 2-3.

1 Pinnacle cannot recover attorneys' fees incurred in litigating against Lopez and
2 True Credit. *Spanier*, 623 P.2d at 29. The Court subtracts from Pinnacle's requested
3 damages \$1,692.50 for 6.9 hours Pinnacle spent litigating against Lopez and True Credit.
4 Doc. 108-1 at 8-10, 13. The Court concludes that Pinnacle may recover attorneys' fees
5 totaling \$24,851.50. *Id.* at 6-16. *See Collins v. First Fin. Servs., Inc.*, 815 P.2d 411
6 (Ariz. Ct. App. 1991) (defendant that incurred attorneys' fees defending against an action
7 permitted to recover the fees from the entity that caused it to be sued).

8 **IT IS ORDERED** that Plaintiff's motion for default judgment is **granted** in the
9 amount of \$24,851.50 against Marcos Vidal Lopez and True Credit Auto Wholesale.

10 Dated this 17th day of February, 2017.

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14 David G. Campbell
15 United States District Judge
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